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6 DOMESTIC VIOLENCE TASK FORCE VIRTUAL MEETING

7 January 11, 2022

8 Held via Webex

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11 PRESENT:

12 Hon. Anna Barbara Hantz Marconi,

13 Associate Justice, New Hampshire Supreme Court

14 Hon. Susan Carbon, Circuit Court Judge

15 Hon. Diane Nicolosi, Superior Court Judge

16 Hon. John Yazinski, Circuit Court Judge

17 Mary Barton, Clerk, Circuit Court

18 Merrill Beauchamp, Director, Victim &

19 Witness Program

20 Kathy Beebe, Executive Director, Haven NH

21 Kristyn Bernier, Investigator, Belknap

22 County Attorney's Office

23 Steven Endres, Assistant County Attorney,

24 Merrimack County

25 Martha Ann Hornick, Grafton County



1 Attorney

2 Mary Krueger, Attorney, NHLA

3 Lynda Ruel, Director, Office of

4 Victim/Witness Assistance, NH DOJ

5 Scott Hampton, Director, Ending the

6 Violence

7 David Hobbs, Hampton, NH Association of

8 Chiefs of Police

9 Lyn Schollett, Executive Director, New
10 Hampshire Coalition

11 Amanda Grady Sexton, Director of Public
12 Affairs, New Hampshire Coalition

13 Jon Strasburger, New Hampshire
14 Association of Criminal Defense Attorneys

15 David Vicinanzo, Attorney, DOVE Program

16 Patricia LaFrance, Attorney, The Black
17 Law Group

18 Betsy Paine, Attorney, CASA NH

19 Pam Dodge, NHBA DOVE Program & 603 Legal

20 Sarah Freeman, Circuit Court

21 Administrator

22 Jean Kilham, Manager, NHJB Domestic
23 Violence Program

24 Erin Jasina, Director, NHLA DV Program

25 Anne Zinkin, Supervisory Law Clerk, NHSC



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1 JUSTICE HANTZ MARCONI: Okay.

2 Welcome to the first of several meetings
3 of the task force on review of domestic
4 violence cases in the judicial system.
5 We are meeting today for an hour, plus or
6 minus, focusing our attention on charge
7 1, which is a review of the existing
8 court practice and procedures.

9 We did have a late-breaking
10 submission to the Dropbox from Kristyn
11 Bernier, which is great. She surveyed
12 folks she works with on the front lines,
13 as we say, and has some additional input
14 on process issues. So we will get around
15 to that, but I wanted to alert you that
16 that has been uploaded to the Dropbox.

17 We will take attendance kind of sort
18 of from the list of participants. I'm
19 not going to go through that, in
20 interests of time. And I want to start
21 out with, A, thanking you for your
22 participation once again.

23 Talking a little bit -- and I'm
24 happy to have feedback about, I'll say,
25 administrative matters, procedure, how



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1 we're going to do this. We have the
2 Dropbox that we have documents uploaded
3 to. You'll see in your agenda we've
4 uploaded the charge outline. And Jean
5 Kilham has been wonderful at adding some
6 edits and focusing some of those items
7 that I listed that were really kind of a
8 brain dump. So that is much appreciated.

9 We have the domestic violence
10 protocols that the court's been operating
11 with. Those are uploaded. And we have
12 three administrative orders. Two are
13 COVID related, and one deals with the DV
14 protocols being made mandatory. So those
15 are core documents. And then we have
16 Kristyn Bernier's survey of folks and
17 input from folks on the front line about
18 process issues.

19 So we will be doing this with each
20 of our meetings, this uploading relevant
21 documents. We have been getting some
22 public comment from the publicly posted
23 email comment address. So those, as they
24 relate to various charges, will be
25 uploaded. So you'll have access to those



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1 also.

2 And we will keep that process open,
3 following this meeting and following each
4 meeting on each charge, so that if
5 someone has a comment, public comment
6 that should be added in there, that's
7 what we're sort of here for.

8 In that same vein, as we only have
9 limited time to discuss these issues, if
10 any individual member of the task force
11 has additional comments to submit,
12 picking up on an issue that we talk
13 about, or additional information
14 something triggers, then feel free to
15 email that to Lisa Merrill or Anne
16 Zinkin, and we will also distribute that
17 to the group.

18 So this is a rolling process. It's
19 not one and done. We're going to be
20 taking the charges one at a time. But
21 our total task force project will be open
22 for the next several weeks, until we wrap
23 it up and summarize our recommendations.
24 So that's sort of the general process.

25 We are livestreaming, and we're



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1 recording so that these -- we've already
2 had inquiry from various entities,
3 stakeholders, interested parties who
4 might not be able to pay attention to the
5 meeting but would like to see it later.
6 So we will have that available to folks
7 as well.

8 And then as we move through and
9 discuss what we're focused on, we will
10 decide what of what we've discussed we
11 want to post not in Dropbox but on the
12 court's website. So there will be
13 documents that we're going to want to
14 identify to post on the website to
15 support the video of us discussing these
16 things.

17 So process questions? Does that
18 make sense to everybody? Yes? No?
19 Okay. And speak up if you have a
20 question. I don't know about these
21 raising-hand things, so I think we can
22 all just work with unmute yourself and
23 jump right in.

24 What we've put down on the agenda,
25 again, is merely guideposts for our



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1 discussion for the time we have today.

2 And so I've just listed kind of in order,
3 or in a time line, various aspects of the
4 domestic violence practice and procedure
5 as we move through the process, starting
6 with the petition process.

7 And two of the administrative orders
8 I'll just draw your attention to, one in
9 2020, which provided for -- allowed for
10 electronic submission of domestic
11 violence petitions. And 2021 provided
12 and allowed for electronic signatures on
13 the petitions. So those, obviously, were
14 two administrative changes that were
15 made, in light of the pandemic, to the
16 petition process.

17 But what we'd like to hear now is
18 anyone's experience with the petition and
19 filing process, particularly the crisis
20 centers who deal particularly with the
21 advocates and with the petitioners, the
22 plaintiffs, the survivors in these cases,
23 and what hurdles, if any, are met in the
24 petition process or any improvements that
25 can be made.



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1 MS. BEEBE: Now that there's a
2 separate time to talk about the charge
3 of --

4 JUSTICE HANTZ MARCONI: I'm hearing
5 someone.

6 MS. BEEBE: Oh, can you hear me?
7 It's Kathy Beebe.

8 JUSTICE HANTZ MARCONI: Ah. You're
9 very faint again.

10 MS. BEEBE: Okay. Can you hear me
11 now?

12 JUSTICE HANTZ MARCONI: A little
13 better, but it's very faint.

14 MS. BEEBE: All right. Let me see
15 what I can do. I'll come back to you.

16 JUSTICE HANTZ MARCONI: Okay.

17 MS. KRUEGER: This is Mary Krueger.
18 And perhaps Kathy will talk about some of
19 this as well. So there are a few issues
20 that come up that we care about at New
21 Hampshire Legal Assistance.

22 We work very closely with the
23 Coalition and with our partner crisis
24 centers, and we actually meet quarterly
25 to talk about a variety of issues,



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1 including what's happening in the courts
2 for victims and survivors and including
3 these cases. So there seems to be some
4 inconsistency around what courts are
5 doing with regards to making a decision
6 on the petition itself, and maybe an
7 uptick in circumstances where courts will
8 set it for a hearing but not actually
9 issue any temporary orders.

10 And the protocols address those
11 scenarios in some detail. And it's
12 unclear to me whether the protocols are
13 always being followed around that, mainly
14 if a court decides that there's not
15 enough to issue temporary orders, but
16 there's something there that needs to be
17 understood more, warranting a file
18 hearing.

19 The court ought to, one, have the
20 judge talk to the petitioner at that time
21 to assess the situation. Maybe there's
22 additional details that the protocols say
23 the judge can, in case law, support.

24 Add those additional details to the
25 petition if those things were left out



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1 that might show that there is imminent
2 danger present to warrant issuing a
3 temporary order or advising that the
4 petitioner or plaintiff can withdraw
5 their petition without prejudice so that
6 the defendant doesn't need to know that
7 that was filed if there's a safety
8 concern that once a defendant's put on
9 notice that something's been filed and
10 there's no orders in place, that can be
11 an incredibly dangerous time.

12 So that's an issue that we've seen.
13 And the protocols, I think, do a decent
14 job of addressing those things. But
15 perhaps they could be tightened up a bit.
16 But I'm not sure they're always being
17 followed. So I think that needs to be
18 brought up with this group.

19 JUSTICE HANTZ MARCONI: Good
20 insight. So A, are the protocols being
21 followed; B, are there improvements to
22 the protocols that could be made to
23 address situations where a petition, on
24 its face, may be some level of
25 insufficient on whether the court should



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1 take additional action and/or allow for a
2 withdrawal without prejudice. Is that a
3 good summary?

4 Others experiencing something
5 similar?

6 MS. PAINE: I would just note, Your
7 Honor -- it's Betsy Paine -- that when
8 we've drafted those protocols, we saw
9 this coming. But I think it may have
10 gotten worse for folks. And I would --
11 I'd look to the gap between the AG's
12 protocol for law enforcement and the
13 court protocol and the ability of
14 entities to assess for lethality.

15 And what's happened is that on the
16 law enforcement side and on -- in the
17 victim advocacy community, there's been
18 huge strides forward in assessing
19 lethality.

20 And there's not really a way, a
21 mechanism to do that in the situation
22 that Attorney Krueger described so well,
23 because if the petition with a pro se
24 petitioner doesn't meet the law, there's
25 no sort of safety net there for a victim,



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1 in terms of assessing the actual
2 lethality of what's happening in the
3 case. And I think that may be the case
4 that got us to the convening of this task
5 force.

6 MS. FREEMAN: To clarify, I believe
7 we're talking about Protocol 5-15, for
8 those of you who don't know where to find
9 it.

10 JUSTICE HANTZ MARCONI: That's good.
11 So this disconnect, if you will, thoughts
12 for how we bridge that gap?

13 CHIEF HOBBS: Excuse me. Dave Hobbs
14 from Hampton, if I could. In terms of
15 the screening for the lethality
16 assessment, we do that when we go to
17 calls for service, when people don't
18 necessarily want to see us.

19 When somebody is going to the court,
20 that tells me that they're looking for
21 help; they're looking for something. And
22 I think that's a good opportunity where
23 they're going to be forthcoming to --
24 more forthcoming to try to seek that
25 help.



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1 If there was some sort of screening
2 process in the petition, where if they
3 rated high, just like we have on our
4 forms, that we could get them in touch
5 with somebody, maybe separate from the
6 court process but some sort of advocate
7 that could help them make some sort of
8 safe plan from the beginning.

9 JUSTICE HANTZ MARCONI: And your
10 screening process, your scaling, if you
11 will, that's an --

12 CHIEF HOBBS: Yeah.

13 JUSTICE HANTZ MARCONI: -- available
14 document that the court could take a look
15 at?

16 CHIEF HOBBS: Yep. I'm talking
17 about the LAP screen. I believe it's in
18 that, the AG's -- law enforcement AG
19 protocols that was sent out today.

20 JUSTICE HANTZ MARCONI: Okay.

21 CHIEF HOBBS: But it's in there.

22 JUSTICE HANTZ MARCONI: Okay.

23 CHIEF HOBBS: But I think that's a
24 good opportunity to -- they're not
25 always -- people -- victims aren't always



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1 that willing to answer when we're there.
2 But we're there in the heat of the
3 crisis, where they have the time to kind
4 of gather their thoughts to go to court.
5 I think they might -- that might be more
6 beneficial.

7 JUSTICE HANTZ MARCONI: And this
8 would be something the advocacy community
9 could, perhaps, help guide victims
10 through, or is it something that the
11 court should be doing independently of
12 the advocacy community?

13 INV. BERNIER: I like the idea of
14 using the lethality assessment protocol,
15 just like we do in law enforcement,
16 potentially putting that as part of the
17 petition packet. It's a one-page
18 document. It's based on -- this program
19 was started in Maryland, if I'm not
20 mistaken. It's a nationwide program.

21 We've refined it in New Hampshire.
22 And again, it's a one-page document.
23 It's a checklist. It's a yes or no
24 thing. And you have a couple criteria.
25 But if a petitioner is signing and



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1 swearing to the document in their
2 affidavit, that could be part of that
3 swearing. Swearing on that document, as
4 well, could be a part of that for a judge
5 to take a look at.

6 And that could be, maybe, a question
7 that it -- a question, too, that a judge
8 may want to ask that petitioner with
9 regard to if they've checked off any of
10 those boxes. It would be really easy to
11 institute, I would think.

12 JUSTICE HANTZ MARCONI: So that's
13 sort of some overlap between the inquiry
14 made by the court on receiving the
15 petition and also something we're going
16 to get to subsequently, which is
17 improvement in forms. So those are good
18 observations.

19 MS. FREEMAN: Lynda --

20 JUDGE YAZINSKI: I think it's
21 a (indiscernible) --

22 MS. FREEMAN: Lynda might be able to
23 correct me, but I believe that the
24 lethality assessment protocol was
25 developed specifically to connect victims



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1 with advocates at the scene of a crime.

2 And it's not particularly tailored to

3 people coming into the court for help.

4 There's a variety of screening tools

5 out there that are used for different

6 purposes, whether it's identifying a

7 family in DCYF who might need to be

8 referred to an advocate. But I would

9 just caution that the lethality

10 assessment protocol, though evidence-

11 based and unique for New Hampshire, may

12 have a different rule than the person

13 walking into the court may need

14 assistance with.

15 But Lynda, please -- or anyone

16 correct me if I'm misstating that.

17 JUDGE YAZINSKI: I think Sarah's

18 correct. It's Jack Yazinski. The

19 lethality assessment is always referred

20 to, when I get a call from the police

21 with a victim looking for protection.

22 When a vic -- when someone comes into

23 court and files the petition itself, what

24 a judge looks at is the -- whether or not

25 there are allegations that constitute



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1 abuse, as defined by the statute.

2 We are trained, and I know domestic
3 violence is one of the areas that Circuit
4 Court judges receive the most training
5 in. We receive the most training in
6 domestic violence. And that has been
7 true in my entire career on the bench.

8 So you look to see if there are
9 facts that establish that abuse, as
10 defined by the statute, has been pled in
11 some way. If it hasn't been pled, then I
12 will meet with the petitioner and ask
13 specific questions to determine if there
14 is something she or he could add to the
15 petition that makes it fit and is
16 appropriate for temporary orders.

17 Betsy -- Ms. Paine will remember
18 there was a time when courts almost never
19 checked off the no-finding box schedule
20 for a hearing. And I think in my career,
21 I may not have done that more than two
22 times. And I couldn't tell you the last
23 time that I did it.

24 But what I think would occur is
25 the -- in that situation the most is that



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1 the victim has arrived at the court and
2 does not have access to an advocate,
3 because I do find if we can get an
4 advocate to the court while the victim is
5 there, most of the time, that petition
6 gets granted on a temporary basis because
7 it includes enough facts.

8 However, the times when we can't get
9 an advocate to the court -- and that's
10 more often than I'd like -- the victim is
11 on their own, trying to meet the
12 statutory requirements of 173-B without
13 ever having read it, in a state of panic,
14 where they're worried about losing their
15 house, worried about losing their
16 children, and are frightened that they're
17 going to be harmed.

18 And while they're dealing with all
19 of those things, they're trying to fill
20 out a form that it is -- it's not a very
21 difficult form, but if you don't know --
22 if you don't know what it is that you
23 need to say --

24 MR. VICINANZO: Yeah.

25 JUDGE YAZINSKI: -- it can be an



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1 impossible form to fill out. So in my
2 perspective, the initial meeting with an
3 advocate, having an advocate available is
4 the key to getting that temporary order
5 in a form that immediately gets granted.

6 MS. JASINA: And this is Erin Jasina
7 at New Hampshire Legal Assistance, just
8 following up on that. And they may be
9 filling out the wrong form. They may be
10 filling out a form for a domestic
11 violence petition, when they should be
12 filling out a stalking petition. And
13 they don't know the difference.

14 A pro se person, a person who may
15 not have an advocate with them may not
16 know which form is the best form to fill
17 out, given their particular
18 circumstances. So I think that piece
19 plays into it as well.

20 JUDGE YAZINSKI: Final comment, and
21 I will stop. That's a very, very good
22 point. My staff here is actually very,
23 very good at telling the victim that the
24 relationship doesn't qualify; it's a
25 stalking issue, or you -- relationship



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1 does qualify, and it's a domestic
2 violence issue.

3 But in the event that I get a form
4 that indicates someone has been stalked,
5 as opposed to abuse has occurred, I have
6 my staff go back out and just attach the
7 new front page to the petition.

8 And I think that's a training issue,
9 Justice Hantz, for -- Marconi -- for the
10 entire state, the entire system.

11 MS. HORNICK: While you're talking
12 about training -- and I'm -- this is just
13 a quick -- just a solid question. And if
14 there are public who are listening or who
15 are going to chime in, they may not know
16 the answer to this question either.

17 Judge Yazinski, when you talk about
18 the fact that you Circuit Court judges
19 get the most training on -- in this
20 particular subject of any other training,
21 what does that actually equate to? How
22 many hours, or how many days, how many
23 weeks? Is it annual? Is it biannual?

24 JUDGE YAZINSKI: Yeah. So Marcie, I
25 would like to say it is annual, but it's



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1 certainly intense when we train new
2 judges. Up until our -- the budget
3 crisis of a number of years ago, each
4 judge was actually sent to a week-long
5 National Council training on domestic
6 violence.

7 When the budget got cut to the point
8 where we have no educational travel fund,
9 all of the training has taken place in-
10 state. And again, I believe it occurs --
11 it's some -- in some form annually. But
12 those trainings tend to be day-long
13 trainings and sometimes two-day
14 trainings.

15 And they go beyond RSA 173-B. The
16 trainings entail psychologists appearing
17 and talking about the subtle subtleties
18 of abuse. We have survivors who have --
19 who speak about their journey through
20 both the system and relationships. We
21 have training on the impact of domestic
22 violence and children.

23 So it is fairly broad. However,
24 knowing that a person -- a husband's
25 controlling behavior and verbal abuse,



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1 financial control, shutting the person
2 out from family and friends, we all know
3 that that is abuse. But the legislature
4 has decided it's not, or at least has not
5 told us that it is, statutorily.

6 But we do use those things when we
7 form orders in parenting cases and when
8 we form orders in divorce cases. So it's
9 not strictly confined to an action under
10 173-B.

11 JUSTICE HANTZ MARCONI: Thank you.

12 MS. FREEMAN: To clarify one point,
13 we do use federal VAWA STOP funds to be
14 able to send judges out of state and also
15 bring external consultants in.
16 Unfortunately, due to COVID, those
17 opportunities have been limited due to
18 travel restrictions. But that is
19 something that is happening for new
20 judges when those organizations are still
21 holding those trainings.

22 MS. RUEL: And I'd just like to say
23 I think the judge is definitely on to
24 something because we train law
25 enforcement at the AG's office, through



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1 protocols and our conference, to not have
2 victims fill out their -- the incident
3 report to write down if they're a victim
4 of crime, like, all of the details. We
5 train them not to do that, for all the
6 reasons that the judge outlined in when
7 he was speaking to us.

8 So I think it's interesting that we
9 have that expectation of our victims of
10 domestic violence through the restraining
11 order process. So I throw that out as
12 something to continue to explore.

13 I'm a big supporter of the victim
14 being able to have their own process.
15 But I also will have learned over the
16 years that they don't know what we're
17 looking for for information. And I think
18 the judge outlined that really clearly.

19 JUSTICE HANTZ MARCONI: Well, and I
20 will just add to this a perspective that
21 in watching the rollout of e-Filing, an
22 unintended benefit, if you will, of the
23 e-Filing process in Circuit Court in
24 other areas, because family and domestic
25 violence, because of all the



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1 confidentiality issues, is not a
2 candidate for ready e-Filing because of
3 all the technological issues. So that's
4 coming last.

5 But when you look at other areas of
6 the law, the process of e-Filing almost
7 results in a guided interview kind of
8 process, where questions are asked that
9 prompt answers from people to fill in the
10 information that's required.

11 So you're going in a probate thing.
12 Is this a -- is there a trust? Is the
13 person -- has the person died? What are
14 you looking for? And so that -- I just
15 throw that out there as something sort
16 of -- instead of just presenting someone
17 with a form that they don't understand
18 what is necessary, it could be -- and
19 this might get to the form issue again.

20 But we might be able to look at
21 adding to the process, especially if
22 there's not an advocate, but sort of a
23 guided interview to get people where they
24 need to go and get the information that's
25 necessary for the court to be able to



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1 act. So just a thought.

2 MS. LAFRANCE: Yeah, I was -- this
3 is Patty (ph.) LaFrance. I was going to
4 say pretty much the same thing, I think,
5 is -- I use my taxes as an example.

6 I get my tax form, right, from my
7 accountant. And by the time I finish
8 filling out the checklist of what I did
9 and didn't do during the year, I feel
10 like my taxes are already done.

11 If we could do something like that
12 with the form, where you have, did you do
13 this; did you do that, or maybe -- my tax
14 forms are, like, five or six pages long,
15 but -- and then just specifically
16 tailored to what is defined as abuse,
17 because you're right. I mean, victims,
18 anybody applying for a restraining order,
19 they really have no idea about what's
20 required to define abuse.

21 So if it was there in front of them,
22 even, like, a little cheat sheet or
23 something that talked about just the
24 what's required to find abuse -- is it
25 criminal threatening; is it property



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1 damage or whatever the case may be -- so
2 I think that would be helpful.

3 And again, maybe I'm putting the
4 cart before the horse, talking about
5 changing the forms.

6 JUSTICE HANTZ MARCONI: Well, it all
7 kind of goes together. And so as we
8 don't run out of time, I'm going to -- we
9 have the agenda. We've got other aspects
10 of the process and procedures that I want
11 to hear about.

12 The hearing process, I know there
13 are issues there. The distribution of
14 orders, I don't know that it's a hot-
15 button issue, but it would be good to
16 have an understanding if there are issues
17 there; amendments to orders, if they
18 happen, how they happen; withdrawal of
19 petitions; expiration of orders and
20 renewal of orders. Those are sort of all
21 part of the ball of wax of the overall
22 process. So don't feel confined.

23 MS. PAINE: Your Honor, I would ask
24 a question that I don't know the answer
25 to. And I don't know if in the digital



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1 age, the definition of actual notice
2 under the federal statute, under VAWA,
3 has become redefined to include any kind
4 of electronic service or -- because our
5 statute was tied to the federal law in
6 order to make the firearms provisions of
7 our orders enforceable nationally.

8 And I think that actual notice
9 language comes to us from the federal
10 statute. And a qualifying order requires
11 that. And so it would be great to get
12 some feedback from folks who are doing
13 that work at the federal level, to see if
14 there's been any evolution in what
15 constitutes service.

16 JUSTICE HANTZ MARCONI: It's a good
17 point. If we don't know, we will find
18 out. Is anyone actively working with
19 that at the moment?

20 MS. FREEMAN: Jean and I can
21 confirm. I'm hesitant to give a legal
22 opinion without doing the research first.

23 JUSTICE HANTZ MARCONI: We might
24 task you with looking that up. Okay.
25 Good point, because I feel we've had --



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1 in terms of notice, there's a process, a
2 protocol for telephonic notice in some
3 circumstances. So it would be worthwhile
4 to know what's required and whether there
5 are, again, improvements that we can
6 make, consistent with the federal law.

7 MS. JASINA: I was hoping I could
8 just make a general comment as we're kind
9 of going through this process. I don't
10 think we have to start from scratch. I
11 think we have a good foundation. What we
12 have does work in best-case scenarios.
13 It's more of an issue of how it's
14 applied, how the process that is
15 currently in place is applied and that
16 it's not applied consistently statewide,
17 that it varies from court to court.

18 For example, if a plaintiff walks
19 into any courthouse in the state, I would
20 see step one is for there to be contact
21 between the clerk and the community
22 crisis center so that it's possible that
23 then the plaintiff is connected with an
24 advocate.

25 So then step two is, well, what's



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1 the best choice for me in that moment?
2 Is it to file a domestic violence
3 petition? Is it to file a stalking
4 petition? Is it to file no petition, and
5 maybe also connecting with legal aid or
6 603 Legal Aid or a private attorney, and
7 then making sure that the protocols are
8 applied.

9 Protocol 5-15 is a great protocol.
10 And when it works, we've had great
11 success with it. But when it's not
12 applied, we're often seeing victims
13 walking away with no orders in place, no
14 temporary orders in place, but a hearing
15 set. And for that thirty days, there's
16 high risk of danger.

17 So I just -- I think a lot of what
18 we're dealing with is more of a
19 consistency issue, not necessarily a flaw
20 in the process that we have in place.
21 That's not to say there's not room for
22 improvement, but I've just seen, over the
23 years, that that's -- the consistency of
24 how it's applied may be the larger issue.

25 JUSTICE HANTZ MARCONI: Well, and



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1 that's part of -- we have processes, but
2 if they aren't being followed, then part
3 of the process is how do you -- how do
4 you raise that issue in real time? How
5 does a litigant raise that issue in real
6 time so that it's not an anecdote for
7 later that this isn't happening?

8 But as a court system, we would want
9 to be able to address that -- call it
10 noncompliance or that oversight or
11 whatever it is at the time.

12 So for example, if somehow there's a
13 glitch in notice, how do we confirm, if
14 there's a way, that actual notice was
15 given? Or if clerks are supposed to -- I
16 don't know the answer to this -- contact
17 the crisis center in every case, if that
18 contact somehow falls through,
19 unavailable, whatever, how do we put our
20 finger in the dike in that step of the
21 process?

22 So you're right. This isn't just
23 about processes we have in place, but
24 it's kind of like a backstop, if there
25 can be one. And I don't know. A lot of



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1 that's resources, et cetera. But if
2 there can be a backstop for when things
3 don't follow the process, or -- you're
4 right. In best-case scenario, there's an
5 advocate. There's a legal advocate.

6 But we all know that there aren't
7 enough lawyer hours, and there aren't
8 enough paid legal aid attorneys. So how
9 do we fill that gap? I think that's also
10 part of this. And obviously, that's
11 coming later. But that's part of what
12 our task is. And in process, that also
13 can be part of what we're trying to
14 illuminate as gaps in our process. So I
15 appreciate that inconsistency is an
16 issue.

17 MS. BEEBE: Folks, hear me now?
18 Y'all hear me?

19 MS. SEXTON: I would just -- this is
20 Amanda Grady Sexton from the New
21 Hampshire Coalition. I would absolutely
22 agree with what Erin said in terms of
23 inconsistency, application of our
24 existing protocols, which are largely
25 good. But they are also extremely



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1 outdated. And I think that one of the
2 things we should do is recommend that we
3 reconvene a group to update those
4 protocols.

5 And I think one of the things that
6 would be important to do is to ensure
7 that we look at what other states are
8 doing in terms of lethality assessment
9 programs, judicial programs, and bench
10 books to help guide judges in assessing
11 for lethality, because there's just been
12 some extraordinary research that's been
13 done in terms of determining when victims
14 are at high risk. And I think we should
15 be using it across the board. So --

16 JUSTICE HANTZ MARCONI: My
17 understanding is the protocols are, let
18 me say, in process of -- early-stage
19 process of starting the process of
20 updating. And I do think COVID, et
21 cetera, got in the way, but excellent
22 suggestion. That should likely be a
23 recommendation here for a regular review.
24 But I think it should be --

25 MS. SEXTON: Yeah, I think it should



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1 certainly be multidisciplinary --

2 JUSTICE HANTZ MARCONI: Right.

3 MS. SEXTON: -- in terms of updating
4 those.

5 JUSTICE HANTZ MARCONI: Right. And
6 I also think, in terms of the
7 consistency -- and again, I'm just -- I'm
8 spit-balling. But if there is a -- if we
9 can establish an avenue for these
10 anecdotes, if you will, or experiences
11 with lack of consistency, but a regular
12 avenue for those to reach the appropriate
13 administrators, that can, too, be part of
14 the process.

15 Question?

16 MS. SCHOLLETT: Hi, Justice Hantz
17 Marconi. This is Lyn Schollett, also
18 from the Coalition. And thank you for
19 raising that point. That's what I was
20 about to say. I think finding a way to
21 formalize a feedback loop and open
22 communication between the incredible
23 experts that are on this call, who are in
24 the courtrooms regularly, and when we see
25 challenges in the system would be so



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1 incredibly valuable.

2 We'd be hugely supportive of that
3 because we do see --

4 JUSTICE HANTZ MARCONI: Yeah. I'm
5 thinking that's something we should think
6 about how that would work, but yes.

7 MS. LAFRANCE: So I --

8 JUSTICE HANTZ MARCONI: Go ahead.

9 MS. LAFRANCE: This is Patty
10 LaFrance. In terms of the
11 inconsistencies with following the
12 protocols -- and I don't know how -- it's
13 Odyssey, right, the software that the
14 court uses?

15 JUSTICE HANTZ MARCONI: I believe
16 so, yes.

17 MS. LAFRANCE: So why can't there be
18 some kind of trigger or popup that comes
19 up? I mean, at some point, the clerks,
20 the court, they have to get onto that
21 computer and print something out. So why
22 not popup menus or little popup boxes,
23 like when you try to delete a file,
24 right? Are you sure you want to delete
25 this, right?



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1 Why can't it be, have you -- has
2 this -- is this person represented by an
3 attorney, or have they been referred to
4 legal aid, or why can't that be
5 incorporated? It should be an easy
6 software code to put in there, to put a
7 popup, or if it's (indiscernible) --

8 JUSTICE HANTZ MARCONI: I will
9 (indiscernible), the e-Filing rollout,
10 for some reason, the technology, various
11 products that all go into all the
12 different case types that end up
13 happening, it's not all uniform. But I
14 am not the tech person, and that's an
15 excellent suggestion.

16 MS. BEEBE: Can you hear me now?
17 Can anyone hear me now?

18 MR. VICINANZO: Still faint.

19 MS. BEEBE: It's driving me crazy.
20 I wanted to follow up to what Erin was
21 saying, though, about the system and it
22 coming down to more having access to
23 those things.

24 One of the -- one of the pieces that
25 we see as a huge gap is the folks that



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1 are eligible for a DOVE attorney that
2 make just a little bit too much money but
3 then don't have the ability to secure any
4 sort of legal assistance on their own.

5 And then the other piece is that
6 it's great to have an advocate there all
7 the time, but where we're in that kind of
8 safety-planning support role and not
9 really able to do or necessarily
10 understand all the nuances of what needs
11 to be included, what we've seen is the
12 ones that have not been -- the ones that
13 have not been granted have been either
14 there's too much information or there's
15 not enough, and that science of finding
16 that exact amount.

17 It's nice to hear the judge talk
18 about if you're not seeing the
19 information that you need, bringing the
20 folks in to find out what is missing so
21 that it can be granted.

22 And then looking at the part in the
23 protocol around -- I think it's 5-19
24 where it talks about if the victim
25 doesn't meet the criteria, then you don't



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1 need to issue the temporary, and you can
2 go right to a permanent. But then it
3 says, specifically, the danger that that
4 can put the victim in.

5 And so to meet the immediate
6 physical danger is not happening a lot so
7 that they're not being granted. But then
8 what we know is that that then increases
9 their risk for that lethality. And so
10 that's where we're seeing folks either
11 not continuing on to try to get it or
12 just trying to stop the process because
13 they -- they're feeling like they're
14 going to be at more danger.

15 And we saw that after the incident
16 that created this commission, was several
17 of the folks that did not want to appear
18 again in that courtroom and would rather
19 just endure the abuse that they were
20 experiencing than worry about it
21 escalating if they weren't able to get
22 the protection that they needed. So
23 (audio interference) hear me?

24 JUSTICE HANTZ MARCONI: Right.
25 That --



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1 MS. DODGE: I'm sorry. Can you all
2 hear me? This is Pam Dodge from 603
3 Legal Aid. One of the things that I
4 think is a big problem -- and I don't
5 know how to resolve it, other than I --
6 maybe one suggestion.

7 When litigants are -- when
8 plaintiffs are going to the court, there
9 isn't an attorney there to give them
10 advice. So everybody has noted they
11 don't know what they're go -- they don't
12 know what they don't know. They don't
13 know what to put in that petition.

14 And so one of my thoughts is that if
15 the petition is insufficient, the person
16 talks to the judge, the judge feels like
17 there's more going on and they really
18 want to have that hearing, but there
19 isn't enough to grant the order ex parte,
20 if we had some kind of a clinic model in
21 the courts, where -- can we find some
22 attorneys, maybe a combination of NHLA
23 and private DOVE attorneys to perhaps be
24 at the courthouse to meet with the
25 clients who haven't met that burden?



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1 Perhaps they could withdraw it or leave
2 it there but then have it amended with
3 a -- hopefully, in a very short-term long
4 term.

5 I mean, that's just something that
6 I'm thinking about as I'm listening to
7 all of this is the missing piece is the
8 legal advice and to understand, really,
9 what they need to ask for.

10 JUSTICE HANTZ MARCONI: That sort of
11 the clinic model or the navigator model,
12 I think, is something that is under
13 consideration by Access to Justice in
14 lots of different areas.

15 But that might also help, for
16 example -- don't know -- but if there is
17 a hearing irregularity. I know there
18 have been issues raised with whether
19 advocates can accompany victims in their
20 hearings, sit at the table, what the
21 level of disclosure is.

22 So if there are issues with hearing
23 processes, is there a way to remedy those
24 sort of in real time, again, or is this
25 something that becomes an anecdote that



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1 we deal with after the fact? Same thing
2 with choices, withdrawing petitions or
3 how you go about renewing a petition, so
4 are there areas in the process that we
5 need to look at?

6 MS. DODGE: Yeah. The other -- one
7 other thing is that the law school -- I
8 mean, I don't know, and I don't want to
9 speak for them. But there may be an
10 opportunity for law students to also be
11 part of the resolution here and working
12 with faculty members who can provide the
13 advice and oversight.

14 MS. LAFRANCE: I mean, that's --
15 they'd have to be, what, Rule 36, right?

16 MS. DODGE: Right.

17 MS. LAFRANCE: So that would only be
18 third year. I think that's how it works.
19 It's been a while since I've been in law
20 school.

21 Dave (ph.) Vicinanza, is that right?

22 MS. DODGE: It is typically third
23 year. But with the DOVE program, because
24 we do a miniseries with second-year
25 Daniel Webster Scholars. And they, by



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1 Court Rule, are allowed to, under the
2 supervision of an attorney, take cases.

3 JUSTICE HANTZ MARCONI: And maybe
4 that's something we should look at too.
5 And again, this gets to options to
6 increase legal manpower, which is a later
7 topic. But we may want to look at the
8 rules.

9 And that's the other thing, previews
10 of coming attractions, but advocates.
11 I'm going to want to do a dive into how
12 we expand the advocacy core, if you will,
13 and whether there are options to provide
14 sort of semi-targeted advocates in
15 certain circumstances. I don't know.

16 Certainly, folks in here who are
17 training the advocates and know sort of
18 how they get qualified, maybe there are
19 ways to tweak that process, which I'd
20 like to hear about.

21 All right. Anything else with
22 current practice and procedure? And
23 again, this is not a single opportunity
24 and then we're done. This is the
25 beginning of a discussion. And if you



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1 close up your Webex today and think of
2 something, feel free to write it down and
3 send it in, and we will share it with
4 everyone.

5 MS. DODGE: I do have one other
6 concern. And I don't know if it's
7 ongoing because I haven't heard a lot
8 about it. But at some point in the fall,
9 we were having a lot of clients in some
10 areas where service was not being
11 perfected on the defendants. And it
12 was -- the law enforcements just didn't
13 have the bandwidth to get the defendants
14 served.

15 And therefore, by the time the
16 hearing was coming around, they hadn't
17 been served, so the case gets continued.
18 And it seems to me -- and as I was
19 reviewing the protocols again, is there
20 an opportunity, if the law -- if the
21 particular law enforcement division
22 doesn't have the bandwidth for service,
23 can we get it off to the sheriff's
24 office?

25 And is there -- can we provide more



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1 guidance on that? Because for plaintiffs
2 just to be waiting, not knowing, and have
3 this order that really hasn't even been
4 served is really unsettling for them.

5 JUSTICE HANTZ MARCONI: And are you
6 talking about the order after the
7 petition or -- well, after the temporary
8 hearing? You aren't talking --

9 MS. DODGE: Yes.

10 JUSTICE HANTZ MARCONI: -- about
11 further orders; it's just that one? Yep.

12 MS. DODGE: The service -- the
13 petition itself.

14 JUSTICE HANTZ MARCONI: Yeah. What
15 do people think about that? What's our
16 law enforcement guy think about that, or
17 are you able to sort of survey your
18 membership and find out if it's -- if
19 there's an issue and if there's a
20 solution?

21 INV. BERNIER: I think sometimes the
22 service issue depends, just as much as
23 we're talking about inconsistency in
24 training across the board with different
25 core professionals, that falls into play



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1 with law enforcement as well.

2 Some of your smaller agencies that
3 might have part-time individuals, less
4 supervision, less access to resources,
5 maybe less experience, might not know
6 the -- be able to pick up the phone and
7 call other agencies.

8 I know from years with Portsmouth,
9 we would pull out the stops, in terms of
10 locating that individual, contacting
11 other law enforcement agencies where that
12 individual might be. Oftentimes you'll
13 have a subject that will try to dodge
14 service. But we were always successful
15 in that. And a lot of it comes down to
16 communicating within agencies.

17 We all -- as the Hampton chief can
18 attest to, we share a lot of clientele.
19 And we all do work very closely together.
20 So it's about having those -- if you
21 don't pick up the phone and make those
22 phone calls and encouraging those
23 agencies that may have fewer personnel or
24 less training not to be wary of picking
25 up the phone and asking for help, whether



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1 it be the local sheriffs' departments,
2 State Police, or some of your bigger
3 agencies where that defendant may be
4 work-wise or staying.

5 It's about making sure the agencies
6 realize how imperative it is to get that
7 Serve Ace (ph.) app and then making it a
8 priority in knowing who to call.

9 JUSTICE HANTZ MARCONI: So that
10 could just be some communication,
11 education, and emphasis that interagency
12 cooperation is a thing and is available.

13 CHIEF HOBBS: Yeah, I would agree
14 with Kristyn. I mean, I -- we get
15 notified from the court. I think other
16 departments are probably different,
17 smaller departments, which might delay
18 some of the service, which goes back to,
19 I guess, completely separate from the
20 petition process.

21 I think there needs to be some sort
22 of help with getting somebody, some
23 safety plan in place, an advocate type
24 thing or a role to be involved with them
25 from the beginning if there is a delay in



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1 the service or -- we know people violate
2 these orders. And so aside from the
3 petition, I think having somebody take
4 some steps when they need to to keep
5 themselves safe is important.

6 JUSTICE HANTZ MARCONI: Outside of
7 the court process, and again, that would
8 be something advocates are trained to
9 provide. So they've got one foot in
10 court and one out, I guess, is one way to
11 look at it.

12 All right. Any other thoughts on
13 process, thoughts on our process? Does
14 this work for people? I mean, is this
15 sort of focus on one thing at a time a
16 way forward, so we get randomly doing
17 things?

18 And again, this is just the
19 beginning of the conversation. My
20 expectation is we will continue to share
21 thoughts. We will summarize those things
22 as we go through, and at the end, and
23 come up with our recommendations.

24 MS. PAINE: Justice Hantz Marconi,
25 is there a time line yet for these orders



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1 to go into the e-Filing system? Is there
2 any way to anticipate that change as we
3 think about this work, or should we just
4 continue on as if we're going to be in
5 the old system for a period of time?

6 JUSTICE HANTZ MARCONI: We're going
7 to be in the old system for a period of
8 time. e-Filing has run into some
9 technical hurdles, if you will. And then
10 these cases are behind the others that
11 are awaiting some bandwidth changes.

12 So we should work with what is, for
13 now, which would mean, for example, the
14 guided interview idea would have to be
15 done on paper, not electronically like
16 TurboTax, which would be great. But the
17 time line's not set.

18 With respect to this meeting, I am
19 thinking, unless we have more input --
20 and we have time --

21 MS. LAFRANCE: I just had another --
22 a quick thought on service, because I
23 literally just had this happen to me
24 today with a client who got a restraining
25 order.



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1 The protocols say that the court
2 will take care of service, right? If
3 someone, like my client today, has an
4 attorney, who -- us family law attorneys
5 are used to serving divorce petitions,
6 parenting petitions, ex partes. Can they
7 be given the option of the attorneys
8 handling the service? I mean, because we
9 have contacts with the sheriff's
10 department as well. So it might ease up.

11 And I understand this isn't for
12 everybody, only somebody who has an
13 attorney. And I know we're trying to
14 work on getting everybody an attorney.
15 But we might also have contact. If we
16 know the other party, if we've already
17 been involved with the other party, we
18 might be aware that they have -- and I
19 mean, it happens all the time in
20 parenting petitions, divorce petitions.
21 If I know they're represented by counsel,
22 will you agree to accept service on their
23 behalf?

24 It doesn't happen a hundred percent
25 of the time, but I think giving a



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1 petitioner or plaintiff that option of
2 having their attorney take care of the
3 service might ease the burden on the
4 courts just a bit.

5 MS. FREEMAN: The other service
6 issue that comes up rarely -- but it
7 comes up -- is when someone lives in
8 another country or is out of state, where
9 it creates a complicating factor because
10 our law enforcement, largely, is highly
11 trained in serving the way New Hampshire
12 does it and the way New Hampshire
13 statutes require it.

14 But whenever we go outside of our
15 borders, it is complicating because not
16 other -- other states don't serve the way
17 that we do. And other countries
18 certainly don't. So I think it's the
19 other complicating piece.

20 JUSTICE HANTZ MARCONI: Right.
21 Constables in Massachusetts, at least it
22 was when I was practicing down there, so
23 yes, it is a different process. And it
24 may be that is an area where there could
25 be some guidance documents created to



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1 help folks.

2 All right. This is helpful, of
3 course. We will summarize comments,
4 topics, areas of focus. We will
5 circulate that. We have the documents
6 that we've been working with, the
7 protocols, the administrative orders,
8 which are more ministerial, but -- and my
9 thought would be -- unless people
10 disagree, is we would upload the
11 protocols to the public website, so that
12 people know what we're talking about, and
13 the administrative orders.

14 And once we've arrived at a summary
15 of our discussion and some, again, focal
16 points -- I'm not concluding anything
17 today, so everybody can continue to
18 comment -- we'll upload that as well.
19 And then we'll move on to our next
20 discussion point. Does that work? I see
21 nodding heads. Good. Any final
22 thoughts?

23 JUDGE YAZINSKI: Justice Marconi?
24 Yeah. Can I make one request of this
25 group? If you would look at the petition



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1 itself and think about and then comment
2 on what you might suggest to make the
3 form more user-friendly.

4 I have often thought -- several
5 people brought this up -- that listing
6 out the actual things that constitute
7 abuse, have a checkbox and then a place
8 to explain it, it would be much more
9 user-friendly than what we have now,
10 which is a paragraph and then a large
11 open space.

12 But I'd be curious to know if others
13 have suggestions or thoughts about how to
14 make that form and that first page more
15 user-friendly.

16 JUSTICE HANTZ MARCONI: I think
17 that's a good request, and it will
18 dovetail into -- I forget which charge,
19 where we look at all the forms. But
20 given this discussion we've had today, I
21 think that's a good segue. Get your
22 pencils out --

23 FEMALE SPEAKER: It's charge 2, so
24 that would be tomorrow.

25 JUSTICE HANTZ MARCONI: Okay. Then



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1 that's tomorrow. So everybody get your
2 pencils out. You have homework. And we
3 will take that up first thing tomorrow.

4 All right. I appreciate -- and take
5 a look at Jean's amended review of
6 existing court practice and procedure.
7 She very definitely filled out a skeletal
8 outline, all good information. And I
9 appreciate your time. I appreciate your
10 attention. And I think we are off to a
11 good start.

12 FEMALE SPEAKER: I misspoke. It's
13 charge 4. Don't listen to me.

14 JUSTICE HANTZ MARCONI: Oh, okay.
15 Well, okay. Then you have -- you still
16 have homework, but you have a little over
17 a week to get that done.

18 All right. And any suggestions for
19 improving the process, feel free to let
20 me know. My feelings don't get hurt, so
21 feel free to give me an email and let me
22 know what we can do to make this even
23 better. Thank you, all.

24 IN UNISON: Thank you.

25 (End of audio)



C E R T I F I C A T I O N

I, Cheryl Odom, certify that the
foregoing transcript is a true and
accurate record of the proceedings.



Cheryl Odom (CDLT-186)

TTA-Certified Digital Legal Transcriber

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